

minimum wages under New York Labor Law; and attorneys fees and costs.  
amount due as liquidated damages under the FLSA, damages equal to 25 percent of his unpaid  
(collectively "NYLL"), he is entitled to unpaid minimum wages from Defendants, and equal  
§206) and the New York Labor Law, Art 6, §§ 190 *et seq.*, and Art. 19, §§ 650 *et seq.*  
2. Plaintiff alleges, on behalf of himself, that under Section 6 of FLSA (29 U.S.C.  
*et seq.*

1. Plaintiff alleges on behalf of himself and other similarly situated current and  
former employees of the Defendants and who elect to opt into this action pursuant to the Fair  
Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216(b), that they are: (i) entitled to unpaid wages  
from Defendants for overtime work for which they did not receive overtime premium pay, as  
required by law, and (ii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. §§201

**NATURE OF THE ACTION**

-----X  
Defendants.  
:  
:  
:  
ROQUE JUNIOR, Individually,  
:  
CORP., a New York corporation, and VALBER  
:  
corporation, BARDOLINO'S RESTAURANT  
:  
BEM BOLADO FOOD CORP, a New York  
:  
:  
-against-  
:  
:  
Plaintiffs,  
:  
:  
of All Other Persons Similarly Situated,  
:  
RAFAEL CARRFON, Individually and on Behalf  
-----X

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**COMPLAINT AND  
JURY DEMAND**

MAY 08 2007

3633

CV 07

JUDGE SWANIN

9. Pursuant to 29 U.S.C. §207, Plaintiff seeks to prosecute his FLSA claims as a collective action on behalf of all persons who are or were formerly employed by Defendants at any time since May 8, 2004 to the entry of judgment in this case (the "Collective Action Period"), who were non-exempt employees within the meaning of the FLSA and who were not paid overtime compensation at rates not less than one-half times the regular rate of pay for hours worked in excess of forty per workweek (the "Collective Action Members").

### **COLLECTIVE ACTION ALLEGATIONS**

8. Upon information and belief, Defendant BARDOLINO'S RESTAURANT CORP. is a New York corporation, with its principal place of business in New York County. York corporation, with its principal place of business in New York County.

7. Upon information and belief, Defendant BEM BOLADO FOOD CORP. is a New York corporation, with its principal place of business in New York County.

6. Plaintiff, Rafael Carreon, at all relevant times, an adult individual, residing in Queens County.

### **THE PARTIES**

5. §§ 2201 and 2202.

This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391.

FLSA pursuant to 29 U.S.C. § 216(b).

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337, 1343, and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff's claims under the

### **JURISDICTION AND VENUE**

- b. what proof of hours worked is sufficient where the employer fails in its duty to maintain time records;
- c. whether Defendants failed to post or keep posted a notice explaining the minimum wages and overtime pay rights provided by the FLSA in any area where Plaintiffs are employed, in violation of C.F.R. § 516.4;
- d. whether Defendants failed to pay the Collective Action Members overtime compensation for hours worked in excess of eight hours per day and/or forty hours per workweek, in violation of the FLSA and the regulations promulgated thereunder;
- e. whether Defendants' violations of the FLSA are willful as that term is used within the context of the FLSA;
- f. whether Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive and statutory damages, interest, costs and disbursements and attorneys' fees; and
- g. whether Defendants should be enjoined from such violations of the FLSA in the future.
14. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.
- STATEMENT OF FACTS**
15. At all relevant times, Defendants maintained and operated restaurants in New York County.
16. Plaintiff worked as a cook and related duties.

10. This collective action class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are approximately 100 members of Class during the Collective Action Period, most of whom would not be likely to file individual suits because they lack adequate financial resources, access to attorneys or knowledge of their claims.

11. Plaintiff will fairly and adequately protect the interests of the Collective Action Members and have retained counsel that is experienced and competent in the fields of employment law and collective action litigation. Plaintiff has no interest that is contrary to or in conflict with those members of this collective action.

12. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action.

13. Questions of law and fact common to the members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all members. Among the common questions of law and fact common to Plaintiff and other Collective Action Members are:

a. whether the Defendants employed the Collective Action members within the meaning of the FLSA;

17. Throughout all relevant time periods, upon information and belief, and during the course of Plaintiff's own employment, while Defendants employed Plaintiff and the Collective Action Members/the Class, the Defendants failed to maintain accurate and sufficient time records and failed to post or keep posted a notice explaining the minimum wage and overtime pay rights provided by the FLSA.
- FIRST CLAIM FOR RELIEF:**  
**FAIR LABOR STANDARDS ACT**
18. Plaintiff, on behalf of himself and all Collective Action Members, reallege and incorporate by reference paragraphs 1 through 17 as if they were set forth again herein.
19. At all relevant times, Defendants have been and continue to be, an employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).
20. At all relevant times, Defendants employed, and/or continues to employ, Plaintiff and each of the Collective Action Members within the meaning of the FLSA.
21. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of \$500,000.
22. Plaintiff consents in writing to be a party to this action, pursuant to 29 U.S.C. §216(b). Plaintiff's written consent is attached hereto and incorporated by reference.
23. At all relevant times, the Defendants had a policy and practice of refusing to pay overtime compensation to its employees for their hours worked in excess of forty hours per workweek.
24. As a result of the Defendants' willful failure to compensate its employees, including Plaintiff and the Collective Action members, at a rate not less than one and one-half

compensation at rates not less than one and one-half times the regular rate of pay for each hour

30. Defendants willfully violated Plaintiff's rights by failing to Plaintiff overtime

meaning of the New York Labor Law, §§ 2 and 651.

29. At all relevant times, Plaintiff was employed by the Defendants within the

1 through 27 as if they were set forth again herein.

28. Plaintiff, on behalf of himself, realleges and incorporates by reference paragraphs

**NEW YORK LABOR LAW**  
**SECOND CLAIM FOR RELIEF:**

disbursements of this action, pursuant to 29 U.S.C. § 216(b).

for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and

compensation, an additional amount equal as liquidated damages, additional liquidated damages

Collective Action members, are entitled to recover from the Defendants, their unpaid overtime

27. Due to the Defendants' FLSA violations, Plaintiff, on behalf of himself and the

within the meaning 29 U.S.C. § 255(a).

26. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA

U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

the wages, hours and other conditions and practices of employment in violation of the FLSA, 29

to make, keep and preserve records with respect to each of its employees sufficient to determine

its employees, including Plaintiff and the Collective Action members, the Defendants have failed

25. As a result of the Defendants' failure to record, report, credit and/or compensate

29 U.S.C. §§ 207(a)(1) and 215(a).

Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including

times the regular rate of pay for work performed in excess of forty hours in a workweek, the

worked in excess of forty hours in a workweek, in violation of the New York Labor Law and its regulations.

31. The Defendants' New York Labor Law violations have caused Plaintiff and the irreparable harm for which there is no adequate remedy at law.

32. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants his unpaid overtime compensation, damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 663(1).

33. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff the minimum wage for the first forty hours of work performed in each week, in violation of N.Y. Labor Law § 592(1).

**PRAYER FOR RELIEF**

Wherefore, Plaintiff on behalf of himself and all other similarly situated Collective Action Members, respectfully requests that this Court grant the following relief:

a. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of an FLA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. §216(b) and appointing Plaintiff and his counsel to represent the Collective Action members;

b. A declaratory judgment that the practices complained of herein are unlawful under the FLA and the New York Labor Law;

a trial by jury on all questions of fact raised by the complaint.

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands

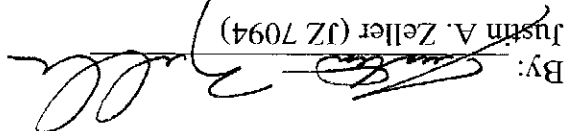
**DEMAND FOR TRIAL BY JURY**

- c. An injunction against the Defendant and its officers, agents, successors, employees, representatives and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- d. An award of unpaid overtime compensation due under the FLSA and the New York Labor Law;
- e. An award to Plaintiff of unpaid minimum wage compensation due under the FLSA and the New York Labor Law
- f. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay overtime compensation pursuant to 29 U.S.C. § 216;
- g. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay minimum wage compensation pursuant to the New York Labor Law.
- h. An award of prejudgment and postjudgment interest;
- i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- j. Such other and further relief as this Court deems just and proper.



**ATTORNEY FOR PLAINTIFF AND THE  
PROPOSED CLASS**

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By:  Justin A. Zeller (JZ 7094)

Dated: New York, New York  
May 7, 2007

**NOTICE OF CONSENT TO JOIN**

The undersigned, Rafael Carrion, hereby consents, pursuant to 29 U.S.C. §216(b) to become a party plaintiff in this action.

CLIENT SIGNATURE



DATE  
5/7/07